

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT BROCK,

Defendant-Appellant.

UNPUBLISHED

July 21, 2000

No. 210722

Wayne Circuit Court

Criminal Division

LC No. 97-003614

Before: Murphy, P.J., and Collins and Owens, JJ.

MURPHY, P.J. (dissenting).

I respectfully dissent from the decision of the lead opinion to affirm defendant's convictions. I would instead reverse the convictions on the ground that the conduct of the trial judge deprived defendant of a fair trial.

Although defendant did not raise this issue on appeal, this Court is nevertheless empowered to go beyond the issues raised and to address any issue which, in its opinion, justice requires be considered and resolved. *People v Cain*, 238 Mich App 95, 127; 605 NW2d 28 (1999). In this instance, the procedural posture of this case brought the issue to light. Defendant was convicted at the conclusion of a joint jury trial which likewise resulted in the conviction of his alleged codefendant, Dekovas Johnson. Although not consolidated for appellate consideration, the appeals in these codefendants' cases were submitted together for consideration by this panel. Codefendant Johnson did raise the issue of improper conduct on the part of the trial judge, and based on our conclusion that the trial judge's interference with the trial pierced the veil of judicial impartiality, we reversed Johnson's convictions. See *People v Johnson*, unpublished opinion per curiam of the Court of Appeals, released this same day (Docket No. 210699).

Contrary to the lead opinion, I find that notwithstanding the separable nature of the numerous instances of improper judicial conduct, and their distinguishable impact vis-à-vis the two codefendants, the pervasive interference of the trial judge tainted both convictions and compels reversal in this case to avoid inconsistent results. See *People v Hayden*, 132 Mich App 273, 288-289 n 8; 348 NW2d 672 (1984).

I would reverse.

/s/ William B. Murphy